

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOSHUA MURRAY,

Plaintiff,

v.

Case No. 22-11107

NATIONAL ASSOCIATION OF
REALTORS,

Sean F. Cox
United States District Court Judge

Defendant.

_____ /

**ORDER REGARDING
PENDING MOTION TO DISMISS**

Plaintiff filed this putative class action against Defendant on May 20, 2022. After Defendant filed a Motion to Dismiss, this Court issued its standard order, giving Plaintiff the option of responding to that motion or filing an amended complaint in order to remedy any pleading deficiencies. Plaintiff then filed his First Amended Class Action Complaint (“FAC”) on October 11, 2022. It asserts just one count: “Violation of Michigan’s Preservation of Personal Privacy Act (PPPA § 2).”

On October 25, 2022, Defendant filed a Motion to Dismiss Plaintiff’s FAC. In Plaintiff’s response to that motion he references Defendant’s website and asserts that Defendant sells subscriptions to the magazine at issue in this case to non-members at the price of \$56.00. (Pl.’s Br. at 7). Plaintiff’s brief states “To the extent the Court finds this material for purposes of deciding the Motion,” “Plaintiff respectfully requests leave to amend the complaint to add an allegation that Defendant sells the publication for \$56.00 to non-members.” (*Id.* at 11 n.3).

In Defendant’s reply brief, it expressly objects to this Court’s consideration of additional

facts asserted in Plaintiff's brief, that were not included in the FAC. (Def.'s Reply Br. at 4 n.4).

In addition, Plaintiff's brief also includes the following footnote: "In the unlikely event the Court finds any deficiencies in the allegations of the FAC, Plaintiff requests leave to amend to cure those deficiencies." (*Id.* at 25 n.9). If Plaintiff wishes to file another amended complaint, he must file a motion seeking leave to do so and, pursuant to the local rules, must attach his proposed amended complaint. The Sixth Circuits "disfavor of such a bare request in lieu of a properly filed motion for leave to amend was made clear in *Begala v. PNC Bank, Ohio, N.A.*, 214 F.3d 776, 784 (6th Cir. 2000)." *Alliance for Children, Inc. v. City of Detroit Public Schools*, 475 F.Supp.2d 655, 669 (E.D. Mich. 2007). Simply stated, Plaintiff is not "entitled to an advisory opinion from the Court informing [him] of the deficiencies of the complaint and then an opportunity to cure those deficiencies." *Begala, supra*, at 784.

Accordingly, the Court **ORDERS** that if Plaintiff wishes this Court to consider the additional factual assertions included in its response brief, or any other new allegations, Plaintiff must file a motion seeking leave to file another amended complaint. **Any such motion must be filed no later than January 17, 2023.**¹

IT IS SO ORDERED.

s/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: January 9, 2023

¹Any such motion must state whether defense counsel was contacted about the proposed amendments and whether Defendant opposes or consents to the motion.